IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 242 OF 1999

IN

SUM. SUIT NO. 2426 OF 1998

Bank of India & Ors. .. Plaintiffs

vs.

Ravi Prakash Khemka

& Others. .. Defendants.

Mr. Nitin Thakker a/w O.A. Das for plaintiffs.

Mr. D.H. Mehta i/by Mulla & Mulla

for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 5th September, 2005.

P.C.

. The present suit is filed for recovery of a sum of Rs. 1,18,06,864.95 along with interest at the rate of 21% per annum on the principal amount of Rs. 82,37,925/- from the date of the filing of the suit till payment and/or realisation. The learned counsel for the plaintiffs gives up the claim in respect of interest and restricts the claim to the principal amount of Rs. 82,37,925/-.

2. There was an open offer for purchase of the shares by the defendants which is evidenced in writing at Exhibit A to the plaint. Pursuant to the said open offer the plaintiff tendered 3,84,500 shares out of which the defendants retained 2,33,700 shares. The plaintiff became entitled to the amount as per the document of offer which comes to Rs. 82,37,925/-. After accepting the said offer and the contract having been concluded on 18.11.1996, the defendants forwarded the said shares back to the plaintiff bank saying that they will buy the same in March 1997. The plaintiff has thereafter addressed a letter dated 3.12.1996 inter alia refusing to accept the said shares back and stating that they are retaining the said shares without prejudice to their rights and remedies available in law to obtain the price and the payment of the said 2,33,700 shares.

3. Since no amount was paid the notice of demand was sent and ultimately the present suit is filed. The plaintiff before me is Bank of India and the shares belong to the Mutual fund known as Bank of India Mutual Fund. The plaintiff took out the summons for judgment. The suit was initially transferred to the Debt Recovery Tribunal but since retransfered to this Court and therefore, there has been a delay in hearing of the summons for judgment.

4. The learned counsel for the defendants contends that the present suit is not maintainable as a summary suit as the same is not based on a written contract. In my opinion, the said submission is without any merit because the written contract is entered into by virtue of the offer which is at page 22, acceptance thereof by the plaintiff and acceptance of the shares by the defendants by their letter dated 22.5.1996. The amount is also liquidated sum as an amount of money payable for 2,33,700 shares is already mentioned in the said document. In that view of the matter, there is a written contract spealt out from the aforesaid documents and the present suit is maintainable. However, the learned counsel for the defendants contends that the said agreement has been given a go-by and by letter dated 11.11.1996 the defendants have returned the said shares. Though the plaintiff has accepted the same without prejudice to the rights and contentions according to the defendant there is a new contract arrived at under which the defendants promised to purchase the said shares but the price is not fixed but the agreement is to be performed in March 1997. I do not find any merits in the aforesaid contention because according to me, once the defendants have accepted the said offer, mere return of the shares will not bring the contract to an end. The next contention of the learned counsel for the defendants

that the remedy of the plaintiff, if any, is in the nature of specific performance of the so-called written contract or alternatively in the damages, is equally without any merit. The plaintiff having tendered the said shares and the defendant having accepted the said shares, the liability of the defendant to pay is absolute. Merely because the defendants have returned the said shares subsequently, would not absolve the defendants from the liability to pay the said amount. However, with a view to give an opportunity to the defendants to defend the suit I direct the defendants to deposit a sum of Rs. 80 lacs in this Court within a period of 8 weeks from today, failing which the plaintiff will be entitled to a decree.

5. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

6. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.